

AMENDED IN SENATE MARCH 30, 2000

AMENDED IN SENATE FEBRUARY 10, 2000

**SENATE BILL**

**No. 1342**

**Introduced by Senator Burton**

(Principal coauthor: Assembly ~~Member~~ *Members Baugh  
and Villaraigosa*)

**(Coauthors: Senators Alarcon, Alpert, Figueroa, Johnson,  
Lewis, Murray, Polanco, Solis, Speier, and Vasconcellos)**

(Coauthors: Assembly Members Ackerman, Alquist, ~~Baugh~~,  
Bock, Campbell, Cardenas, Cardoza, Cox, Dutra, Keeley,  
Knox, Kuehl, Leach, Longville, Mazzoni, Migden, and  
Washington)

January 10, 2000

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An act to add ~~Section 1405~~ *Sections 1405 and 1417.9* to the  
Penal Code, relating to forensic testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Burton. Forensic testing: post  
conviction.

Existing law authorizes the defendant in a criminal case to  
file a motion for a new trial upon specified grounds including,  
but not limited to, the discovery of new evidence that is  
material to the defendant, and which could not, with  
reasonable diligence, have been discovered and produced at  
the trial.

This bill would grant to a defendant who was convicted in  
a criminal case, the right to file a motion after entry of  
judgment of conviction for the performance of forensic DNA

testing on evidence that is relevant to the charges that resulted in the conviction but was not subject to testing, upon specified conditions, if the evidence or the technology for testing that evidence was not available to the defendant at the time of trial. The bill would require that ~~reasonable~~ notice of the motion be served upon the Attorney General *and the district attorney in the county of conviction. The court would be required to allow the testing upon specified findings.*

*The bill would also require, except as otherwise specified, the appropriate governmental entity to preserve any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case.* By increasing the duties of local officials this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1405 is added to the Penal Code,  
2 to read:  
3 1405. (a) A defendant who was convicted in a  
4 criminal case, may make a *written* motion before the trial  
5 court that entered the judgment of conviction in his or  
6 her case for performance of forensic DNA testing on  
7 evidence that is relevant to the charges that resulted in  
8 his or her conviction or sentence, but which was not  
9 tested because either the evidence or the technology for

1 the forensic testing of the evidence was not available to  
2 the defendant at the time of trial. ~~Reasonable~~—A notice of  
3 the motion shall be served upon the Attorney General  
4 *and the district attorney in the county of conviction 30*  
5 *days prior to the hearing. The motion shall be heard by*  
6 *the judge who conducted the trial unless that judge is*  
7 *unavailable.*

8 (b) ~~If~~ *The court shall allow the testing if* the defendant  
9 presents a prima facie case that identity was a significant  
10 issue ~~at the trial that resulted in his or her conviction, the~~  
11 ~~court shall allow the testing under reasonable conditions~~  
12 ~~designed to protect the people's interests in the integrity~~  
13 ~~of the evidence and the testing process upon a~~  
14 ~~determination of both of the~~ *the court finds the following:*

15 (1) The result of the testing has the scientific potential  
16 to produce new, noncumulative evidence that is material  
17 and relevant to the defendant's assertion of innocence.

18 (2) The testing requested employs a method generally  
19 accepted within the relevant scientific community.

20 (3) *The evidence to be tested is available and in a*  
21 *condition that would permit the DNA testing that is*  
22 *requested in the motion.*

23 (4) *The evidence to be tested has been subject to a*  
24 *chain of custody sufficient to establish it has not been*  
25 *substituted, tampered with, replaced or altered in any*  
26 *material aspect.*

27 (c) *If known to the defendant, or his or her counsel,*  
28 *the motion shall identify the evidence subject to the*  
29 *testing and the specific type of testing that is requested.*

30 (d) *The court may at any time appoint counsel for an*  
31 *indigent applicant under this section.*

32 (e) *If, after the hearing, the court grants the motion*  
33 *for DNA testing, the testing shall be conducted by a*  
34 *laboratory mutually agreed upon by the district attorney*  
35 *in a noncapital case or the Attorney General in a capital*  
36 *case and the person filing the motion. If the parties cannot*  
37 *agree, the court shall designate the laboratory to conduct*  
38 *the testing.*

39 (f) *The result of any testing ordered under this section*  
40 *shall be fully disclosed to both the person filing the motion*

1 *and to the district attorney. If requested by either party,*  
2 *the court shall order production of the underlying data*  
3 *and notes.*

4 *(g) The cost of DNA testing ordered under this section*  
5 *shall be borne by the state or the applicant, as the court*  
6 *may order in the interests of justice, if it is shown that the*  
7 *applicant is not indigent and possesses the means to pay.*

8 *(h) Evidence samples containing biological material*  
9 *are exempt from any law requiring disclosure of*  
10 *information to the public or the return of biological*  
11 *specimens.*

12 *(i) The provisions of this section are severable. If any*  
13 *provision of this section or its application is held invalid,*  
14 *that invalidity shall not affect other provisions or*  
15 *applications that can be given effect without the invalid*  
16 *provision or application.*

17 SEC. 2. *Section 1417.9 is added to the Penal Code, to*  
18 *read:*

19 *1417.9. (a) Notwithstanding any other provision of*  
20 *law and subject to subdivision (b), the appropriate*  
21 *governmental entity shall preserve any biological*  
22 *material secured in connection with a criminal case for*  
23 *the period of time that any person remains incarcerated*  
24 *in connection with that case.*

25 *(b) A governmental entity may destroy biological*  
26 *material before the expiration of the period of time*  
27 *described in subdivision (a) if all of the following*  
28 *conditions are met:*

29 *(1) The governmental entity notifies all of the*  
30 *following persons of the intention of the governmental*  
31 *entity to destroy the material; and the provisions of this*  
32 *section: any person who remains incarcerated in*  
33 *connection with the case, any counsel of record, the*  
34 *public defender in the county of conviction, the district*  
35 *attorney in the county of conviction, and the Attorney*  
36 *General.*

37 *(2) No person makes an application under Section*  
38 *1405 within 180 days of receiving notice under paragraph*  
39 *(1).*

1    (3) *No other provision of law requires that biological*  
2    *notice be preserved.*

3    *SEC. 3.* Notwithstanding Section 17610 of the  
4    Government Code, if the Commission on State Mandates  
5    determines that this act contains costs mandated by the  
6    state, reimbursement to local agencies and school  
7    districts for those costs shall be made pursuant to Part 7  
8    (commencing with Section 17500) of Division 4 of Title  
9    2 of the Government Code. If the statewide cost of the  
10   claim for reimbursement does not exceed one million  
11   dollars (\$1,000,000), reimbursement shall be made from  
12   the State Mandates Claims Fund.

